

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 Ticket Center, Inc., et al.,
4 Plaintiffs,

5 v.

6 Banco Popular de Puerto Rico, et al.,
7 Defendants.

Civil No. 04-2062 (GAG)

8 **OPINION AND ORDER**

9 This matter is before the court on defendants', Banco Popular de Puerto Rico d/b/a Banco
10 Popular, and Popular, Inc., motion for reconsideration. See Docket No. 104. Defendants ask the
11 court to reconsider its previous denial of Banco Popular's Supplemental Motion to Dismiss Pursuant
12 to the Parker Doctrine. See Docket Nos. 71, 99. Specifically, defendants allege that the court erred
13 in its interpretation of the law regarding this issue. For the following reasons, the motion to
14 reconsider is **DENIED**.

15 The state action immunity doctrine, also known as the Parker doctrine, is well-settled law.
16 The test to be applied when determining whether immunity exists is equally as clear. See Southern
17 Motor Carriers Rate Conference, Inc. v. United States, 471 U.S. 48, 105 S.Ct. 1721, 1726 (1985);
18 Tri-State Rubbish, Inc. V. Waste Management, 998 F.2d 1073, 1076-77 (1st Cir. 1993);
19 Massachusetts Furniture & Patio v. Federal Trade Commission, 773 F.2d 391, 394 (1st Cir. 1985).

20 As recently as 2005, the First Circuit reaffirmed that in order to obtain state action immunity
21 under Parker, the state must manifest intent to intervene in the market, displacing antitrust laws and
22 must engage in active supervision of the challenged conduct. Arroyo-Melecio v. Puerto Rican
23 American Ins. Co., 398 F.3d 56, 71 (1st Cir. 2005) (citing Cal. Retail Liquor Dealers Ass'n v.
24 Midcal Aluminum, Inc., 445 U.S. 97, 105 (1980)). "Stated another way: first, 'the challenged
25 restraint [on trade] must be one clearly articulated and **affirmatively expressed** as state policy'; and
26 second, 'the policy must be actively supervised by the State itself.'" Id. (emphasis added). This is
27 the rule that was applied to the instant case.
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1 Banco Popular argues that the court erred because it applied the Midcal test to the current
2 facts. However, this court is bound by the clearly stated precedent of the First Circuit. It must be
3 noted that in no part of Banco Popular's pleadings, where this issue has surfaced, does the
4 "affirmatively expressed" portion of the rule appear. Notwithstanding, the court analyzed Banco
5 Popular's arguments *vis-a-vis* the correct standard and concluded that the motion arguably failed on
6 the first prong of the test, but for the sake of a complete analysis assumed *arguendo* and concluded
7 that the motion failed on the second prong as well.

8 Finally, as the court previously stated, and as noted by the First Circuit, antitrust actions
9 should rarely be dismissed prior to giving the plaintiff ample opportunity for discovery. See Docket
10 Nos. 83, 89; Morales-Villalobos v. Garcia-Llorens, 316 F.3d 51, 56 (1st Cir. 2003)(reversing
11 dismissal where specific elements of antitrust cases generally hinge on questions of fact not to be
12 decided on motions to dismiss). This is the case here.

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14 **SO ORDERED.**

15 In San Juan, Puerto Rico this 8th day of August 2006.

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17 */s/ Gustavo A. Gelpi*

18 GUSTAVO A. GELPI
19 United States Magistrate-Judge
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